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FREEDOM OF MOVEMENT

Written statement submitted by Pax Christi International,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 July 1998]

GE.98-13374 (E)

1. All human beings, including persons with irregular status (PIRS), are born free and equal in dignity, rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. It is possible to distinguish several groups of persons with irregular status (PIRS):

- rejected asylum seekers, including asylum seekers who lodged an appeal without the effect of suspending any deportation order and therefore they may be deported;

- rejected asylum seekers who cannot be returned, or not yet returned in safety, but who remain excluded from subsistence allowance or social benefits;

- rejected asylum seekers whose final request to have their case "regularized" on medical or other humanitarian grounds has been denied;

- refugees of (civil) war and externally displaced persons whose temporary protected status has been withdrawn;

- family members of an alien with a residence permit whose application for family reunification has definitely been rejected;

- alien students whose student residence permit can no longer be prolonged;

- aliens with irregular status holding genuine documents which are no longer valid;

- clandestine immigrants who entered the country illegally and never applied for a residence permit;

- migrant workers (including alien au pairs, domestic personnel, women in the entertainment business, etc.) who entered legally but whose temporary residence permit has expired; and

- undocumented migrant workers.

3. PIRS form a group of people much talked about but little known. There are few exact facts and data available concerning persons with irregular status. Relevant research is lacking and case studies are few and too specific to be able to draw general conclusions from them. As a result, stereotypes and biases prevail. For example, PIRS are labelled as threatening the labour markets, yet in California studies indicate that they effectively stimulate the market.

4. In practice aliens with irregular status and their families can hardly enjoy the basic human rights and basic housing, services and benefits essential for a decent standard of living. Obviously, civil society will

always distinguish citizens from aliens with irregular status, approaching PIRS in a discriminatory way. Laws and rules prohibit undocumented or ill-documented aliens from enjoying their fundamental rights in an equal manner. A certain degree of distinction may be justified as long as an "ethical minimum" standard of humane living conditions is guaranteed to any person whatever her or his legal situation might be.

5. By denying the minimum means necessary to survive with human dignity, the authorities are encouraging a situation of insecurity which they should rather wish to prevent. Being refused access to social benefits, PIRS join the increasing number of poor and destitute citizens on the margins of society. Alien and local outcasts find each other and stick together in underground survival. This will create an institutionalized dual society, unless provisions are made for minimum allowances and social benefits which guarantee humane living conditions for all. Excluding destitute PIRS from minimum social services means laying the foundations of a potentially explosive dual society.

6. International law and jurisprudence confirm that discrimination on grounds of nationality may be legitimate if a number of criteria are respected. For example, the goal and means for discriminating between comparable groups of persons should be objective, reasonable and adequate. The interpretation is left to the courts. Obviously the court's interpretation is always influenced by public opinion, for better or for worse. Therefore, PIRS and their rights should not be approached merely from the national perspective (citizen/non-citizen) but within the framework of universal human rights. The fundamental rights are laid down in international declarations and conventions.

7. Legal discrimination against PIRS and their families make them very vulnerable. They can easily fall victim to social or sexual abuse, extortion, and exploitation. Their living and working conditions often amount to cruel, inhuman and degrading treatment. Moreover, as a group, PIRS are being used as a scapegoat for society's evils. They are systematically considered criminals or potential criminals simply by the fact that they cannot have their irregular stay legalized. Governments often have a one-sided point of view when it comes to matters of immigration and asylum, putting them in the same category as terrorism, drug trafficking, illegal trafficking of weapons, or organized crime. By harmonizing their restrictive measures (visa regulations, carriers' liability, detention, cutting subsistence allowances, facilities and benefits for groups of arriving aliens) Governments are facing a rise in clandestine immigration and other illegal entry practices. Under these circumstances PIRS run the risk that basic human rights are denied, curtailed or violated. Human rights organizations, NGOs, fieldworkers and churches increasingly report cases of cruel, inhuman and degrading treatment of PIRS and their families.

8. Without questioning the State's right to control access to its territory and to determine conditions for legal entry and (temporary) residence, Pax Christi International urges Governments and the authorities concerned to respect not merely the legal obligations of States but moreover an ethical minimal standard of living (not mere survival) with human dignity.

9. As along as destitute PIRS remain in the country, they should have access to adequate shelter, nutrition, clothing, health care and education for minors corresponding to an ethical understanding of what it means to have a decent standard of living. Access to basic facilities and accommodation should be legally guaranteed.

10. Destitute pregnant women with irregular status should not be prevented from giving birth in hospitals and from receiving the necessary pre- and post-natal care. Children born from families and mothers with illegal status should be registered. Minors should be entitled to live with their families and to receive social welfare, health care and public education.

11. Holding legal or irregular status should not make any difference as far as children's rights are concerned. In all circumstances the authorities should consider the child's well-being as the first and foremost criteria. If responsible repatriation or family reunification of children in an illegal situation is not possible, regularization should be considered rather than leaving them without protected status.

12. Governments should respect the right of PIRS to marry, to enjoy family life and privacy. They should not prohibit or obstruct marriage and family reunification by excessive administrative requirements, regulations or delays.

13. PIRS, women, children and men alike, are the first victims of all forms of cruel, inhuman and degrading practices of slavery and labour exploitation. Therefore, the principle of equal treatment when it comes to employment should be extended to PIRS. Irregularity in their stay or employment cannot be an excuse for depriving aliens of any rights derived from the principle of equality.

14. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families repeatedly extends rights and protective measures to migrant workers in an irregular situation. While the International Convention is not yet legally binding, Governments are no longer morally free to take measures or to cover practices contrary to the Convention's principles and obligations. Governments should take adequate and effective measures, including sanctioning employers, to combat all forms of cruel, inhuman and degrading employment of children, women and men with irregular status.

15. Destitute PIRS should have access to adequate medical aid. Governments, therefore, should guarantee the refunding of all necessary and prescribed medical treatment, including aftercare.

16. Governments should establish a legal framework and procedures for "regularization" of the situation of persons and families with irregular status according to objective, reasonable and humane criteria. Special attention should be given to the specific situation of women and children. Before being detained and forcibly deported, rejected PIRS and their families should be given an opportunity for voluntary repatriation.

17. Detention, including pre-expulsion detention, of PIRS and their families should be legal and in accordance with international standards as laid down in several international and regional conventions. Non-convicted PIRS may be deprived of their freedom only during the time strictly needed to organize the deportation. Prolonged or unlimited detention of PIRS and their families until deportation is unacceptable.

18. Justified forced expulsion should be subject to instructions, rules and precautions so as to avoid racist-inspired brutalities and cruel, inhuman and degrading treatment. Forced expulsion should not be entrusted to private firms unless they respect a closely monitored code of conduct concerning human rights and humane treatment. PIRS should not forcibly be deported unless there are credible guarantees from the receiving country that the life, integrity and freedom of the deportees will be respected.